IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.714/2005

Date of Decision :14.5.2007..

Ramesh Chand. …Petitioner.

Versus:

State of H.P. and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Ajay Sharma, Advocate.

For Respondents 1to 3. Mr.C.B.Singh, Dy.Advocate General.

For respondents 4 to 6. Mr.N.K.Thakur, Advocate.

Sanjay Karol, J (Oral).

The present writ petition has been filed with the following relief(s):

(i) That orders passed by respondents No. 1 and 3 dated 29.8.1995, 3.12.1998 and 25.6.2005 annexed herewith as Annexure P-2, P-3 and P-4, respectively may very kindly be quashed and set aside and that of the learned Land Reforms Officer dated 3.11.1993. Anneuxre P-1, may very kindly be restored and entries of tenant in the name of respondents No.4

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

to 6 in the revenue records may very kindly be ordered to be deleted with further directions to quash and set aside the mutation of conferment of proprietary rights sanctioned in favour of respondents No.4 to 6 during the pendency of the proceedings in the interest of law and justice.

(ii) Respondents may very kindly be directed to produce the records of the case before this Hon'ble Court.

(iii) Any other and further reliefs to which the petitioner is found fit and proper may also very kindly be granted in favour of the petitioner and against the respondents."

An application for the correction of revenue entries recording the names of respondents No. 4 to 6. as tenants, was moved by petitioner-Ramesh Chand. The same was allowed vide order dated 3.11.1993 whereby it was held that the respondents were not tenants so as to fall within the definition of Section 2(17) of the H.P.Tenancy and Land Reforms Act (hereinafter referred to as `the Act') . This order was assailed by the private respondents/tenants before the Collector Settlement, Kangra, under Section 14 of the Act and vide order dated 28th August, 1995, the appeal of the tenant was allowed holding that they are in possession of the land in question as tenants in accordance with as per the provisions of the Act. The petitioner preferred a petition which was registered as Appeal No.28/96 titled as Ramesh Chand Vs. Mehanga Singh and others and was dismissed on merits vide order dated 3rd December, 1998. Again a revision petition under Section 74 of the Act being Revision No. 149/99 titled as Ramesh Chand Vs. Mehanga Singh and others was filed which was also dismissed vide order dated 25th June, 2005. While dismissing both the revision petitions, the authorities have relied upon the decision rendered by this Court in *Daulat Ram and Ors. Vs. State of H.P. and Ors.* SLC 1979, 215 to hold that the land in question had automatically

vested with the private respondents/tenants on the enforcement of the provisions of the Act.

The learned counsel for the petitioner has argued that the decision rendered by this Court in *Daulta Ram's* case (supra) is not the correct law inasmuch as there is no automatic vesting of rights in tenant by virtue of provisions of Section 104 of the Act on the appointed date i.e. 3.10.1975. According to him, till such time the provisions of Section 104 of the Act are not complied with in totality, there cannot be any automatic vestment of rights upon the tenant. He has further submitted that respondents No. 4 to 6 in any case do not qualify to be tenants within the definition of Section 2(17) of the Act.

Per contra, the learned counsel for the respondents have contended that the ratio laid down in *Daulat Ram's* case (supra) is the correct ratio and need not be disturbed.

The plea of the petitioner that the private respondents are not tenants so as to fall within the scope of provisions of Section 2(17) of the Act is not acceptable for the reason that the authorities below have already gone into this question of fact and held them to be tenants under the Act. In terms of the orders, the land automatically stood vested in them by virtue of the provisions of Section 104 of the Act. I see no reason to interfere with the impugned order on this finding of fact. An effort has been made by the petitioner to take me through the order dated 3rd November, 1993 passed by Settlement Assistant Collector-cum-Land Reforms Officer, Una to contend that the private respondents themselves had admitted that no amount of rent had been paid and therefore they could not be held as tenants of the land in question. A perusal of the said order, in fact, would show that the respondents' father was recorded as tenant even prior to the purchase of the land by the petitioner on 17.5.1972. In fact petitioner's stand has been self contradictory.

The same order records that he has been dispossessed by the private respondents in the year 1983. Then, how could he has filed an application for correction of entries in the year 1982. . It is undisputed that there are also entries of Jamabandi (1971-72) showing Waryam Singh , father of private respondents No. 4 to 6 as tenant qua the land in question. The contention on all counts is factually incorrect. I, therefore, see no reason to accept this submission of the learned counsel.

With regard to the other contention for the petitioner that there is no automatic vesting of the land by virtue of Section 104 of the Act, I see no reason to differ with the view taken by this Court in *Daulat Ram's* case (supra).

Learned Deputy Advocate General has rightly brought it to my notice that except in the case of persons mentioned in sub-section (8) of Section 104, by virtue of provisions of Section 104(3) of the Act, all rights, title and interest of landowner, other than the one entitled to resume land under sub-Section (1), shall stand extinguished and all such rights, title and interest from the appointed day stood vested in the tenant free from all encumbrances. Admittedly, the provisions of the Act have been notified. The view in Daulat Ram's case (supra) has withstood the test of time. The enactment was part of the process of agrarian reforms and meant to confer benefits upon the tenants. Consequently, the rights of the petitioner not only stood extinguished but also vested in the tenant free from all encumbrances. It is not the case of the parties that any action of resumption has been taken by the petitioner under sub-section (1) of Section 104 of the Act. The Act does not make the landowner remediless. Admittedly the petitioner has not exhausted any of the remedy provided under the Act. In this view of the matter, I see no reason to interfere with the well reasoned orders passed by the authorities below.

For the aforesaid reasons, the writ petition is dismissed.

(Sanjay Karol),
Judge.

May 14, 2007(R)